

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HANMI BANK,

Plaintiff,

v.

GYE HWA LEE; JOHN DOE LEE;
STAR FOOD MART INC; JANE DOE
OCCUPANT; JOHN DOE
OCCUPANT; and OTHER UNKOWN
OCCUPANTS,

Defendants.

NO: 1:16-CV-3139-RMP

ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND

BEFORE THE COURT is Plaintiff's Motion to Remand. ECF No. 4. The Court has reviewed the motion, the supporting declaration (ECF No. 4-1), the notice of removal (ECF No. 1), and is fully informed.

Defendants, who removed the action to federal court, did not file a response to Plaintiff's motion.

BACKGROUND

Hanmi Bank brought an unlawful detainer action against the above identified Defendants, in the Yakima County Superior Court under R.C.W.

61.24.60. ECF No. 1-2 at 3-5. Defendants were served the summons and complaint on May 11, 2016. ECF No. 4-1 at 4. On July 18, 2016, Defendants filed a notice of removal to this Court, citing diversity jurisdiction and federal question jurisdiction as grounds for removal. ECF No. 1.

ANALYSIS

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). A civil defendant may remove an action to federal court based on federal question jurisdiction or diversity jurisdiction. 28 U.S.C. § 1441. However, there is a strong presumption against removal jurisdiction, and the defendant bears the burden of proving that removal jurisdiction exists. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). The Court resolves all ambiguity in favor of remand to state court. *Id.*

A notice of removal of a civil action or proceeding must be filed by a defendant within thirty days “after the receipt of the defendant, through service or otherwise, or a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b)(1).

Plaintiff has moved to remand this matter to Yakima County Superior Court on the grounds that (1) Defendants’ removal was untimely and (2) this Court lacks subject matter jurisdiction over the matter. ECF No. 4 at 3-4.

Under 28 U.S.C. § 1446(b)(1), Plaintiff’s notice of removal is untimely. Defendant was served with the Amended Summons and the Complaint for

1 Unlawful Detainer on May 11, 2016. ECF No. 4-1 at 4. Therefore, Defendants'
2 July 18, 2016 notice of removal was filed well after the thirty days allowed by
3 statute. However, even if the Court were to disregard the untimeliness of the
4 notice of removal, lack of subject matter jurisdiction supports remand of this
5 matter to state court.

6 In the notice of removal, Defendants allege that removal is based on both
7 diversity jurisdiction and federal question jurisdiction. ECF No. 1 at 1. For the
8 district court to have original jurisdiction in civil matters under diversity
9 jurisdiction, there must be diversity of citizenship and an amount in controversy
10 exceeding \$75,000. 28 U.S.C. § 1332. In determining whether a civil action is
11 removable on the basis of diversity jurisdiction, the citizenship of defendants sued
12 under fictitious names are disregarded and removal may not occur if a properly
13 joined and served defendant is a citizen of the state in which the action is brought.
14 28 U.S.C. § 1441(b)(2).

15 In the notice of removal, Defendants allege that Gye Hwa Lee is a
16 Washington State resident, Plaintiff Hanmi Bank does business in the State of
17 California, and the amount in controversy exceeds \$250,000. ECF No. 1 at 2.
18 Additionally, Star Food Mart, Inc., is identified as a Washington corporation. *Id.*
19 at 1. The remaining defendants in the action are identified under fictitious names
20 and, therefore, the citizenship of these defendants are disregarded. Gye Hwa Lee
21 admits to being a citizen of the State of Washington, and Star Food Mart, Inc.,

1 admits to being a Washington corporation, and the action was brought in the State
2 of Washington. Therefore, diversity jurisdiction fails under 28 U.S.C. §
3 1441(b)(2).

4 The Defendants also allege the existence of federal question jurisdiction
5 under 28 U.S.C. § 1331. ECF No. 1 at 1. However, the notice of removal fails to
6 cite any violation of the Constitution, federal laws, or federal treaties. *See* 28
7 U.S.C. § 1331. The cover sheet accompanying the notice of removal identified the
8 U.S. statute under which the case was being filed as “Title 42 Section 1983.” ECF
9 No. 1-1. However, the notice of removal fails to provide any statement alleging
10 that 42 U.S.C. § 1983 (Civil action for deprivation of rights) is relevant in the
11 proceedings. *See* 28 U.S.C. § 1446(a) (the notice of removal must contain “a short
12 and plain statement of the grounds for removal”); *see also Redwood Theaters, Inc.*
13 *v. Festival Enterprises, Inc.*, 908 F.2d 477 (9th Cir. 1990) (“removal based on
14 federal question jurisdiction is improper unless a federal claim appears on the face
15 of a well-pleaded complaint”).

16 Defendants have not met their burden of showing that federal subject matter
17 jurisdiction exists to support the notice of removal to this Court. Therefore, this
18 Court remands the matter to state court on the findings that the notice of removal
19 was untimely and that this Court does not have subject matter jurisdiction to
20 consider the case.

21 / / /

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion to Remand, **ECF No. 4**, is **GRANTED**.

3 2. This matter is **REMANDED** to the Yakima County Superior Court.

4 The District Court Clerk is directed to enter this Order, provide a copy to
5 counsel for Plaintiff and to all Defendants, as well as a certified copy of this Order
6 to the Clerk of the Yakima County Superior Court and **close this case**.

7 **DATED** this 15th day of September 2016.

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9 *s/ Rosanna Malouf Peterson*
10 ROSANNA MALOUF PETERSON
11 United States District Judge
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